

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.911 of 2019

In

Civil Writ Jurisdiction Case No.10625 of 2014

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1. The State of Bihar, through the Principal Secretary, Department of Human Resources, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Human Resources, Government of Bihar, Patna.
 3. The Director, Secondary Education, Bihar Patna.
 4. The Regional Deputy Director of Education, Patna Division, Patna.
 5. The District Education Officer cum District Programme Officer, Nalanda.

... .. Appellant/s

Versus

1. Gita Kumari, Wife of Sri Santosh Kumar, Resident of village Dashrathpur, P.S. Giryak, District Nalanda.
2. The Head Mistress, Project Girls Inter School, Giryak, Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ravi Bhardwaj (AC To GA-13)
For the Respondent/s : Mr. Ranjan Kumar Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 11-05-2023

Heard learned counsel for the appellant as well as learned counsel for the respondents (2nd set).

2. This intra-Court appeal is against order of the Hon'ble Single Judge dated 22.11.2018, whereby and whereunder, relying upon another decision of the Hon'ble Single Judge in *CWJC No. 3522 of 1995 (Madan Prasad Gupta vs. the State of Bihar & Anr.)*, the writ application has been allowed. The



Hon'ble Single Judge has allowed the writ petition, considering the petitioner to be similarly situated as *Madan Prasad Gupta (supra)*.

3. The brief factual background is that the Managing Committee of the school, namely, “*Project Girls Inter School, Giriyak, Nalanda*” decided to appoint the petitioner as an Assistant Teacher of Hindi subject on 24.02.1984. She joined on 01.03.1984. The school in question is a project school of phase 1984 to 1985. For the purposes of approval of services of teaching and non-teaching staff, certain norms/guidelines were decided by an Enquiry Committee, which was later on approved by the State Government. Subject wise distribution of total nine posts was decided as:

(i) Three posts for linguistic group (one post for each Hindi, English and Sanskrit),

(ii) Three posts for Humanities group,

(iii) Three posts for Science group.

4. The petitioner was seeking approval of her services against one of the three posts meant for linguistic group, namely, Hindi. One Smt. Urmila Kumari had already been appointed by the Managing Committee as a Teacher in Hindi, who was also the In-charge Headmistress. Her Services were



senior to the petitioner and has been approved.

5. The fact that the petitioner was appointed by the Managing Committee on 01.03.1984 after appointment of Smt. Urmila Kumari on 27.10.1983 is an admitted position as is evident from the writ petition.

6. The petitioner was thus claiming approval of her services as a Teacher in Hindi, which was impermissible, as per above noted staffing pattern, which provided only one Teacher in the Hindi subject. If the petitioner's services were to be approved, she would be the second Teacher in the Hindi. Since no post was available within the sanctioned staffing pattern, the petitioner's services were not approved. This Court does not find any infirmity in decision of the authorities not to approve the services of the petitioner as a Hindi teacher against the single sanctioned post available in the Hindi subject as per staffing pattern, which was already occupied by Smt. Urmila Kumari.

7. We are, therefore, inclined to accept the submission of the learned State counsel in support of the appeal that the decision of the Hon'ble single Judge treating the petitioner at par with *Madan Prasad Gupta (supra)* is unsustainable. Unlike the petitioner, the said *Madan Prasad Gupta* was within the



sanctioned strength of nine teachers and thus found entitle to absorption, which is not the case here.

8. The learned counsel for the appellant has also placed reliance of paragraph 32 of the recommendation of the three-man Committee, which reads as follows:

"32. समिति द्वारा परियोजना बालिका उच्च विद्यालयों में 09 पदों पर मानक मंडल के अनुरूप शिक्षक-शिक्षिकाओं की नियुक्ति की अनुशंसा की गई है। लेकिन इन सभी परियोजना बालिका उच्च विद्यालयों में प्रधानाध्यापक का पद इसी 09 पद में शामिल है। ऐसी स्थिति में जब इन विद्यालयों में प्रधानाध्यापक-प्रधानाध्यापिकाओं की नियुक्ति होगी, तब जिस विषय के प्रधानाध्यापक - प्रधानाध्यापिका होंगे उस विषय के कनीय शिक्षक को अन्यत्र स्थानान्तरित किया जा सकेगा। ऐसा करने से मानक मंडल की एकरूपता भंग नहीं होगी।"

English translation reads as follows:

"32. The committee has recommended the appointment of teachers according to the staffing pattern of 09 posts of Project Girls High School. But in all these project girls high schools, the post of headmaster is included in this 09 posts. In such a situation, when headmaster-headmistresses will be appointed in these schools, then the junior teacher of the subject for which the headmaster-headmistresses will be there can be transferred else-where. This will not disturb the



uniformity of the staffing pattern."

9. Since Smt. Urmila Kumari was also the In-charge Headmistress, paragraph 32 noted above, also supports the action of the authorities in giving preference to her over the petitioner. Even otherwise, since Smt. Urmila Kumari was admittedly senior to petitioner and in the same subject (Hindi), action of the respondents cannot be faulted. Paragraph 32 permits appointment in another school only when one among the nine is thrown out for reason of appointment of a Headmistress. But when the Headmistress is one of the nine and is teaching the same subject, then it is not in the interest of the school or students to retain another teacher of the same subject.

10. The order dated 22.11.2018 passed in CWJC No. 10625 of 2014 is, therefore, set-aside.

11. We, however, direct that in case the petitioner claims absorption of her services in any other school, such claim is required to be considered by the authorities in terms of the recommendations of the three-man Committee and if such absorption in another school was done in the case of anyone else.

12. The petitioner would be at liberty to approach the authorities along with a copy of this order, for such



consideration in light of these observations, which must be done within 8 weeks from the date of submission of such claim.

13. The directions issued in the instant judgment are in the facts and circumstances of the instant case and shall not be treated as a precedence.

14. The Letters Patent Appeal (LPA) is allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

